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LEGALAction
OF WISCONSIN**40 Years of Justice**TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform,
and Housing

FROM: Bob Andersen

*Bob Andersen*RE: Senate Bill 37, relating to payment of judgements in traffic courts and municipal
courts by installments and the suspension of operating privileges

DATE: February 5, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. One of the programs of LAW focuses on the removal of barriers to employment, through which we are involved in the restoration of driver's licenses.

We would like to thank Sen. Taylor for her leadership in this area and for her leadership on this particular bill. This bill is the same as 2007 SB 412, introduced by Senator Taylor, which was approved by the Senate Committee on Judiciary, Corrections and Housing 5-0 and passed by the full Senate on a voice vote during the past session. It is the same as a bill introduced during the 1999 session (1999 AB 846) that passed the **Assembly Judiciary Committee by a vote of 9-0**, was approved by the **Assembly on a voice vote**, passed the **Senate Committee on Judiciary and Consumer Affairs** by a vote of **5-0**, but failed to pass in the Senate at the end of the session. At the time, there was much controversy over a budget bill enactment that repealed the authority of municipal court judges to suspend driver's licenses for non-traffic violations and it was feared that this bill would be amended in the Senate to undo that repeal. Consequently, the bill was never taken up in the Senate. **The same bill was reintroduced in the Senate in 2001 (2001 SB 253)**, passed the **Senate on a voice vote**, was given a hearing by the Assembly Judiciary Committee, but failed as time ran out, as the enthusiasm of the municipal court judges waned.

The bill was initially drafted with the support of the Municipal Court Judges Association legislative liaison, Michael Hurt, and Sheryl Gervasi, Director of State Court's Office, on behalf of the state's circuit court judges.

I. Purpose

The bill allows low income people the opportunity to avoid the automatic suspension of their

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licenses by making payments of forfeitures in installments. The bill has an important effect on the success of W-2. W-2 providers report that one of the greatest barriers to successful employment for W-2 participants is their inability to drive to job sites because of suspended driver's licenses. Many W-2 participants have suspended driver's licenses because they failed to pay parking tickets, failed to pay forfeitures for moving traffic ordinance violations, or failed to pay forfeitures for other municipal ordinance violations. In many cases, participants have had their licenses suspended because default judgements were entered against them for failure to appear on the return dates.

The bill allows indigent defendants one opportunity to have an installment payment plan ordered in lieu of the suspension of a driver's license. That one opportunity can be offered before the judgment is initially entered or it can be offered after a judgement is entered. Allowing installment payment plans already is the practice for many municipal courts. The bill will make this a uniform practice and will allow jurisdictions, who currently do not believe they have the authority, to enter these installment payment plans.

II. Provisions of the Bill

A. Before Judgements are Initially Entered, Municipal Courts and Circuit Courts are Required to Offer Indigent Defendants Installment Payment Plans Before Suspending their Driver's Licenses, When Defendants Appear in Court.

When defendants appear in court to answer to the charges and are found guilty of ordinance violations, courts are required to first offer them an opportunity to pay the forfeitures by installments, before suspending their driver's licenses, if the defendants are unable to pay because of their poverty. If the defendants subsequently fail to comply with the installment payment plans, their licenses will be suspended.

This is the practice that is actually being followed by many municipal courts and circuit courts. The bill ensures that this practice will be codified in the statutes and that it will be followed by all courts, in municipal ordinance violation cases.

B. After Judgments Have Already Been Entered, Defendants Who are Unable to Pay Because of Poverty may Obtain Installment Payment Plans in Lieu of the Suspension of their Licenses, Provided that They Have Not Previously Been Given an Installment Payment Plan and Failed to Comply with the Plan.

This bill provides that a court shall terminate the suspension of a driver's license that was previously ordered because of an ordinance violation, and substitute an installment payment plan therefor, if all of the following circumstances are met:

- (1) the defendant requests the installment payment plan.
- (2) the defendant is unable to pay because of poverty.

- (3) the defendant has not previously failed an installment payment plan that has been ordered by the court.

If an installment payment plan is ordered under these circumstances and the defendant subsequently fails to comply with the plan, the suspension of the license will be reinstated.

This proposal is considered to be a better approach than requiring the reopening of judgments in these cases. Instead of requiring judgments to be reopened -- which creates administrative problems for the courts and which unsettles those judgments -- this proposal avoids those problems by simply requiring that orders for license suspension be terminated.

C. The Determination that a Person is "Unable to Pay Because of Poverty" Uses the Same Criteria that Already Exists in the Statutes under s. 814.29, Regarding the Waiver of Costs and Fees for Persons who are Unable to Pay Because of Poverty.

In order to establish a uniform definition of poverty for all courts, this bill incorporates the determination of when a person is unable to pay because of poverty that already exists in the statutes, under s. 814.29 (1)(d). Under that section, essentially, a person is determined to be unable to pay costs and fees because of poverty if any of the following is true:

- (1) that the defendant is a recipient of means tested public assistance, including Wisconsin Works, general relief under Chapter 49, relief provided by the counties under s. 59.53 (21), medical assistance, supplemental security income, food stamps, or benefits received by veterans under 45.351 (1) or under 38 USC 501 to 562.
- (2) that the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency.
- (3) that the person is otherwise unable, because of poverty, to pay the fees and costs. In considering the defendant's inability, the court shall consider the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902.

Under this bill, if a defendant meets these criteria, the defendant would be entitled to an installment payment plan in lieu of the suspension of a license, provided the defendant had not already been offered such an option and failed to comply with the plan.

D. The Installment Payment Plan Required under this Bill Would be Required to be a "Reasonable Installment Payment Plan that takes into Account the Defendant's Income."

The purposes of this bill will not be achieved if a genuinely poor person, taking a look at assets and income, cannot make payments because of current income.

LENA C. TAYLOR

Wisconsin State Senator • 4th District

Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

Testimony of Senator Lena C Taylor

SB 37 – Installment Payments of Judgments in Traffic and Municipal Courts
Thursday, February 5th, 2009

Honorable Colleagues:

Thank you for hearing testimony on Senate Bill 37. This bill, which is the result of numerous constituent contacts, judicial meetings, and the subject of untold community forums, speaks to the heart of what our committee has been charged to do.

As we all know, court overcrowding, delayed access to justice, and limited parameters about the penalties available to judges in sentencing, often work against the very individuals that we are trying to help. In particular, the overwhelming number of Wisconsin residents caught in the vicious cycle of judgments issued for traffic or municipal offenses have spiraled so far out of control that many may never get out from under their debt.

Poverty, for many residents, is often a direct vehicle down the road to the loss of driving privileges or incarceration. Often poor defendants are given specified dates to pay a fine, with no consideration for their financial circumstance.

Senate Bill 37 seeks to bring some much needed relief to this issue. By requiring that courts ASK a defendant whether or not they are impoverished or notifying them at the time of rendering a judgment that issues of poverty can be taken into consideration, this allows defendants to work with the courts to set up installment payments that reduce the likelihood of seeing that defendant in the court again for that offense.

The idea that the court would take into consideration a defendant's ability to pay a fine before reaching a point of suspension of operating privileges or even imprisonment just makes sense!

Many agencies, companies or businesses provide their customers the same consideration every day. They have figured out that it is more productive to work out reasonable payment structures that will minimize defaults, additional interest or fees. Our courts should certainly be no different in this regard.

The outcomes of continuing to do business as we currently are too costly. Support for these kinds of common-sense reforms is widespread. The Milwaukee Journal Sentinel editorial I referenced in the early discussion in this committee, calls for this change to be made as well. People around the state are recognizing that in terms of disrupted families, incarceration costs, and overburden courts, we must do things differently.

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